

09-CR-05023-ORD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLAY FRANCIS,

Defendant/Petitioner.

NO. CR09-5023

FINDINGS AND ORDER ACCEPTING  
DEFENDANT FOR DEFERRED  
PROSECUTION, APPROVING  
TREATMENT PLAN, AND DIRECTING  
DEFENDANT TO TAKE TREATMENT  
AS PRESCRIBED

(Clerk's Action Required)

THIS MATTER, coming on for hearing this 27th day of July, 2009, upon the defendant's Petition for Deferred Prosecution; the defendant appearing in person and by his attorney, Jerome Kuh, Assistant Federal Public Defender; the United States of America being represented by Barbara Sievers, Assistant United States Attorney; the Court, having examined and incorporated into the record Petitioner's Petition and Statement in support of deferred prosecution, the evaluation and treatment report prepared by Crossroads, and the files and records herein, being fully advised in the premises, does now make and enter the following:

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1 **I. FINDINGS OF FACT**

2 A. On or about the 27<sup>th</sup> day of September, 2008, Petitioner was charged with the  
3 offense/offenses charged in the Information. This offense occurred as a direct result of  
4 alcoholism/chemical dependency problems;

5 B. Petitioner suffers from an alcohol/drug problem and is in need of treatment;

6 C. The probability of similar misconduct in the future is great if the problem is not  
7 treated;

8 D. Petitioner is amenable to treatment;

9 E. An effective rehabilitative treatment plan is available to Petitioner through  
10 Crossroads, an approved treatment facility as designated by the laws of the State of Washington,  
11 and Petitioner agrees to be liable for all costs of this treatment program;

12 F. That Petitioner agrees to comply with the terms and conditions of the program  
13 offered by the treatment facility as set forth in the diagnostic evaluation from Crossroads,  
14 attached to Statement of Petitioner filed herewith, and that Petitioner agrees to be liable for all  
15 costs of this treatment program;

16 G. That Petitioner has knowingly and voluntarily stipulated to the admissibility and  
17 sufficiency of the facts as contained in the written police report attached to Statement of  
18 Petitioner filed herewith.

19 H. That Petitioner has acknowledged the admissibility of the stipulated facts in any  
20 criminal hearing or trial on the underlying offense or offenses held subsequent to revocation of  
21 this Order Granting Deferred Prosecution and that these reports will be used to support a finding  
22 of guilt;

23 From the foregoing FINDINGS OF FACT, the Court draws the following:

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**D. That Petitioner is eligible for deferred prosecution.**

C. The treatment facility, Crossroads, shall file with the United States Probation Office status reports of Petitioner's compliance with treatment, monthly during the first year of the deferred prosecution period and every three (3) months during the second year. The Court may increase the frequency of these reports at its discretion;

1 D. Petitioner shall notify U.S. Probation within 72 hours of any residence change.

2 E. Petitioner shall abstain during the deferred prosecution period from any and all  
3 consumption of alcoholic beverages and/or non-prescribed mind-altering drugs;

4 F. Petitioner shall not operate a motor vehicle on the public highways without a valid  
5 operator's license and proof of liability insurance sufficient to comply with the state laws on  
6 financial responsibility;

7 G. Petitioner shall be law abiding and shall not commit any alcohol/drug related  
8 offenses or other criminal offenses during the period of deferral,

9 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,  
10 questioned, or cited by Law Enforcement;

11 I. In the event that Petitioner fails or neglects to carry out and fulfill any term or  
12 condition of his treatment plan or violates any provision of this Order or any rule or regulation  
13 of his probation officer, upon receiving notice, the Court shall hold a hearing to determine why  
14 Petitioner should not be removed from deferred prosecution and prosecuted for the  
15 offense/offenses charged;

16 J. In the event the Court finds cause to revoke this deferred prosecution, the  
17 stipulated police reports shall be admitted into evidence, and Petitioner shall have her guilt or  
18 innocence determined by the Court;

19 K. That the statement of Petitioner for Deferred Prosecution shall remain sealed, and  
20 all subsequent reports or documents relating to her treatment information shall be sealed, to  
21 maintain confidentiality of Petitioner's treatment information;

22 L. That the Department of Licensing be notified of this Order accepting the  
23 Petitioner for deferred prosecution;

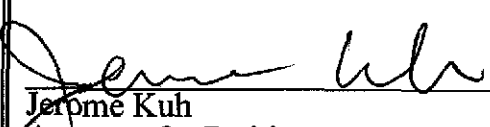
24 M. Upon proof of Petitioner's successful completion of five years deferral period in  
25 this Order, the Court shall dismiss the charges pending against Petitioner.  
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1 N. Additional conditions: see attached

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6 DONE IN OPEN COURT this 27 day of July, 2009.

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UNITED STATES MAGISTRATE JUDGE

11 Presented by:

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14 Jerome Kuh  
Attorney for Petitioner

15 I have received a copy of the foregoing Order of Deferred Prosecution. I have read and  
16 understand its contents, and agree to abide by the terms and conditions set forth herein.

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18 Dated: 7-27-2009

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Clay Francis  
Petitioner

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21 I certify that a copy of this signed Order was mailed to the subject treatment facility, on  
22 July 28, 2009. The United States Probation Office was also furnished a copy  
of this Order.

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Clerk

- (1) You shall not leave the judicial district without permission of the court or probation officer;
- (2) You shall report to the probation officer as directed by the court or probation officer, and shall submit a truthful and complete written report within the first five days of each month;
- (3) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) You shall support your dependents and meet other family responsibilities;
- (5) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) You shall notify the probation officer within seventy-two hours of any change in residence or employment;
- (7) You shall abstain from the use of alcohol or other intoxicants, and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; You shall submit to one drug and/or alcohol test within 15 days of placement on probation (or release from imprisonment) and at least two periodic drug and/or alcohol tests thereafter not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).
- (8) You shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) You shall initiate, maintain, and successfully complete the two-year treatment program recommended by the evaluation report, according to the terms and conditions of that plan and the recommendations of the treating agency;
- (10) You shall permit a probation officer to visit you at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
- (11) You shall not commit any criminal law violation and shall not commit any alcohol related offenses. You will not operate a motor vehicle without a valid operator's license and proof of liability insurance to comply with State law;
- (12) You shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- (13) As directed by the probation officer, you shall notify third parties of risks that may

be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm your compliance with such notification requirement.

- 14) The defendant shall participate in mental health treatment as directed by the defendant's U.S. Probation Officer, and follow the recommendations of the treating agency recommendation of evaluation report, according to the terms and conditions of that plan. The defendant must contribute towards the cost of the program, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.